

# **FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

## **UNIFORM TAX EXEMPTION POLICY**

<b>Originally Adopted:</b>	<b>February 1994</b>
<b>Revised:</b>	<b>April 20, 1999</b>
<b>Revised:</b>	<b>August 23, 2012</b>

## **SECTION 1: PURPOSE AND AUTHORITY:**

Pursuant to Section 874(4)(a) of Title One of Article 18-A of General Municipal Law (the “Act”), the Fulton County Industrial Development Agency is required to establish a Uniform Tax Exemption Policy applicable to the provision of any financial assistance of more than one hundred thousand dollars (\$100,000) to any project.

## **SECTION 2: DEFINITIONS:**

**“Administrative Fee”** shall mean a charge imposed by the Agency to an Applicant for the administration of Project.

**“Affected Tax Jurisdiction”** means, with respect to a particular project, the City, Town, Village, County or School District in which a Project is located and will fail to receive real property tax payments that would otherwise be due with respect to such Project due to a Tax Exemption obtained by reason of involvement of the Agency in such Project. This does not include special taxing jurisdictions.

**“Agency”** or **“IDA”** shall mean the Fulton County Industrial Development Agency.

**“Agency Fee”** shall mean the normal charges imposed by the Agency to an Applicant or a Project occupant to compensate the Agency for the Agency’s participation in the Project. The term “Agency Fee” shall include not only the Agency’s normal Administrative Fee, but also may include:

- (a) Reimbursement of the Agency’s expenses, including but not limited to legal fees and publication fees.
- (b) Rent imposed by the Agency for use of the property of the Agency, and
- (c) Other similar charges imposed by the Agency.

**“Applicant”** shall mean an applicant for financial assistance.

**“County”** shall mean the County of Fulton.

**“PILOT”** or **“Payment in Lieu of Tax Agreement”** shall mean a written agreement between the Agency AND Applicant whereby the Applicant shall make payments to Affected Tax Jurisdictions.

**“PILOT”** or **“Payment in Lieu of Tax”** shall mean any payment made to any Affected Tax Jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an Affected Tax Jurisdiction with respect to a project but for the tax exemption obtained by reason of the involvement of the Agency in such project. Such term shall not include Agency fees.

**“Project”** shall mean an activity which is undertaken by the Agency for the benefit of an Applicant which either (1) has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto, or (2) is a straight lease transaction (as defined under Section 845(15) of the Act) which the Agency has determined to undertake, or (3) lease – lease back projects, or (4) sales tax only projects.

**“Project Sponsor”** or **“Company”** shall mean the developer and/or beneficial user of a Project Facility as designated by the Agency.

**“Tax Exemption”** shall mean any financial assistance granted to a Project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a Project but for the involvement of the Agency, including but not limited to sales transfer tax, mortgage recording tax and real property tax exemptions.

### **SECTION 3: GENERAL PROVISIONS:**

#### **a. General Policies:**

1. The Agency may grant tax exemptions as hereinafter set forth to any Project which has been or will be:
  - (a) Financed by the issuance of Agency bonds, notes or other evidences of indebtedness with respect thereto or
  - (b) Otherwise assisted by the Agency pursuant to a straight lease transaction (as defined under Section 845(15) of the Act).
2. In order to receive any tax exemptions, a Project shall, in the sole judgment of the Agency, create a significant number of new jobs or retain a significant number of existing jobs.
3. No real property tax exemptions shall be granted to a Project that would result in the relocation of an industrial or manufacturing facility from one area of New York State to another, unless the relocation, closure or abandonment is, as determined by the Agency, necessary to enable the Project to maintain its competitive position within its industry.
4. Subject to the prior written approval by the IDA, tax exemptions may be transferable by the Project Sponsor only if the transferee of the Project retains the same or similar use of the Project within the same parameters of the original Project Sponsor.

#### **b. Deviation Policy**

1. The Agency reserves the right to deviate from any provision in this Uniform Tax Exemption Policy in special circumstances. In determining whether special circumstances exist to justify a deviation, the Agency may consider factors, which include but not be limited to the following:
  - a. The magnitude and/or importance of any permanent private sector job creation and/or retention of existing jobs related to the Project;
  - b. The impact of the Project on existing and proposed businesses and/or economic development projects;
  - c. The amount of private sector investment generated or likely to be generated by the Project;
  - d. Demonstrated public support/opposition for the Project;
  - e. The estimated value of the tax exemptions requested; and
  - f. The extent to which the proposed Project will provide needed services and/or revenues to Affected Tax Jurisdictions.
  - g. Other factors outlined in Section 874(4)(a) of the Act.
2. If the Agency is going to deviate from any provision of the Uniform Tax Exemption Policy, the Agency shall adopt a resolution that:
  - a. Identifies the deviation provided.
  - b. Identifies the reasons for the deviation.
  - c. Identifies such terms and conditions as the Agency shall deem just and proper.

#### **c. Application:**

1. No request for a tax exemption shall be considered by the Agency unless a Project Application, which includes an Application for Tax Exemption, is filed with the Agency on the forms prescribed by the Agency.
2. Such Application shall contain the information requested by the Agency, including a description of the proposed Project and of each tax exemption sought with respect to the Project, the estimated value of each tax exemption sought with respect to the Project, the proposed financial assistance being sought with respect to the Project, the estimated date of completion of the Project, and whether such financial assistance is consistent with this Policy.

## **SECTION 4: REAL ESTATE TAX EXEMPTION:**

### **a. General:**

1. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction, supervision or control of the Agency is exempt from real estate taxes, but not exempt from special assessments and special ad valorem levies.
2. It is the general policy of the Agency that, notwithstanding the foregoing, the Project Sponsor of every non-governmental Project shall be required to enter into a Payment In Lieu of Tax Agreement ("PILOT") with the Agency, either separately or as part of the Project documents. Such PILOT Agreement shall require payment of PILOT payments in accordance with the provisions set forth in this Policy.
3. The project documents shall provide that, if the Agency and the Applicant and/or Project Sponsor have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT payments until the expiration or sooner termination of such PILOT Agreement.

### **b. Filing Requirements:**

1. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law as amended, no real estate tax exemption shall be effective until an Exemption Form is filed with the assessor of each Affected Tax Jurisdiction.
2. The Agency will not file a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a (an "Exemption Form") with respect to the Project until a PILOT Agreement is executed and the Project documents stipulate that the Applicant and/or the Project Sponsor shall be required to make PILOT payments in such amounts as would result from taxes being levied on the Project by the Affected Taxing Jurisdictions as if the Project were not owned by or under the jurisdiction, supervision or control of the Agency.
3. Once an Exemption Form is filed with a particular Affected Tax Jurisdiction, the real property tax exemption for such project does not take effect until:
  - a) The next tax status date for such Affected Tax Jurisdiction occurs subsequent to such filing.
  - b) An assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date.
  - c) Such assessment roll becomes the basis for the preparation of a tax roll for such Affected Tax Jurisdiction, and
  - d) The tax year to which such tax roll relates commences.

### **c. Property Assessments:**

1. It is the general policy of the Agency to have the City, Town or Village Assessor establish the assessed value of a Project owned by or under the jurisdiction, supervision or control of the Agency.
2. Commencing in the first taxable year after execution of the PILOT, the Assessor for the Affected Taxing Jurisdiction in which the Project is located shall assess the Project Facility in the same manner and using the same valuation method as other similar properties in the general area of the Project Facility.
3. The Project Sponsor shall be entitled to prompt written notice of the initial Assessed Value and of any change in the Assessed Value. If the Project Sponsor is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, the Project Sponsor shall have the right to contest the Assessed Value of the Project Facility made for the purposes of determining any payments due under the PILOT Agreement and to seek a refund of any such payments made.
4. The Project Sponsor's challenge to the Assessed Value of the Project Facility and its determination to seek a refund of any payments made hereunder shall be made in accordance with New York Real Property Tax Law.

**d. Payment in Lieu of Tax (PILOT) Agreement:**

1. The Agency shall make available to Project Sponsors or Applicants a PILOT Agreement modeled after Section 485-b of the New York State's Real Property Tax Law as shown below:

<b>Tax Fiscal Year</b>	<b>Percentage of Exemption</b>
1	50%
2	45%
3	40%
4	35%
5	30%
6	25%
7	20%
8	15%
9	10%
10	5%
11 and thereafter	0%

2. The Agency may grant enhanced Real Property Tax Exemptions on a case-by-case basis for projects expected to have significant economic impacts, in accordance with the Deviation Policy set forth herein
3. If a Project Sponsor or Applicant incurs a default, under the terms of a PILOT Agreement, the Project Sponsor shall be responsible to:
  - a) Reimburse all of the Agency's legal costs to pursue remedying the default.
  - b) Pay the Agency a \$1,000 fee for each default.
4. If a Project Sponsor or Applicant requests an early termination of a PILOT Agreement with the Agency, the Project Sponsor or Applicant shall be responsible for issuing a payment to the Agency of \$1,000/year for each year the PILOT Agreement was in effect as well as the Agency's legal and other fees associated with processing a request for early termination..

**e. Special District Taxes:**

1. The Agency is not exempt from special assessment and special ad valorem levies. As a result, these amounts are not subject to tax exemptions by reason of ownership of the Project by the Agency.
2. The Project Sponsor shall be responsible for the payment of all special district taxes ad valorem levies imposed by all Affected Taxing Jurisdictions.

**f. PILOT Payments:**

1. Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an Affected Tax Jurisdiction shall be paid directly to the Affected Tax Jurisdiction within thirty (30) calendar days of the receipt of a PILOT invoice.
2. If a PILOT payment is not received by an Affected Taxing Jurisdiction within thirty (30) calendar days of the receipt of a PILOT invoice, a late fee penalty of 2% per month shall be paid to the Affected Tax Jurisdictions for each month a payment is not made.

**g. Enforcement:**

1. An Affected Tax Jurisdiction which has not received a PILOT payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act or such other available remedies.
2. In addition, such Affected Tax Jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the Project documents to enforce payment. If such Affected Tax Jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.

3. If the Agency's approval of a particular Project is predicated upon achievement by the Applicant or Project Sponsor of certain minimum goals, i.e. creating and/or maintaining certain minimum employment levels, the PILOT Agreement may provide for the reduction or elimination of PILOT benefits, if, in the sole judgment of the Agency, the Project has failed to fulfill such minimum requirements.
4. If the Applicant or Project Sponsor after reasonable notice, fails to comply with Project reporting required by the Agency including, but not limited to, annual verification of proper insurance coverage, employment reporting as required under the Act, the Agency may in its sole judgment terminate the PILOT Agreement and make no real estate tax exemption available.

**h. Real Property Appraisals:**

1. Since the policy of the Agency is to base the value of a Project for payment in lieu of tax purposes on a valuation of such Project performed by the local Assessor, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if,
  - (i) The assessor of any particular Affected Tax Jurisdiction requires one, or
  - (ii) If the valuation of the Project for payment in lieu of tax purposes is based on a value determined by the Project Sponsor, rather than by an assessor for a Taxing Jurisdiction or by the Agency.
2. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.
3. The Project Sponsor shall be responsible for paying for the cost of hiring said appraiser.

**i. Required Filings:**

1. If the Agency grants a real estate tax exemption under this Section, the Applicant or Project Sponsor shall be required to annually file, or cause to be filed, with both New York State or the Agency, reports regarding the number of people employed at the project site, the annual and/or hourly salary for all full and part-time employees and provide other information as may be required by New York State or the Agency.

**j. Recapture Policy:**

1. It shall be the policy of the Agency to consider recapturing the value of real property tax exemptions approved for a Project if any of the following conditions arise:
  - The Project Facility as defined in the PILOT/Lease Agreement is sold or closed and the Company leaves or departs the County of Fulton.
  - There is a significant change in the use of the Project Facility and/or business activities of the Company.
  - There is a significant reduction in the number of full/part-time jobs at the Project Facility in comparison to what was estimated in the Company's Project Application that are not reflective of the Company's normal business cycle or national economic conditions.
  - The Company fails to fully comply with all periodic and/or annual reporting requirements of the Agency, State or Federal government.
  - The Company failed to achieve any minimal new job creation figures specified by and within the timeframes specified by the Agency.
2. The Agency shall review each Project on a case-by-case basis. The Agency shall have the sole discretion whether to pursue including into a PILOT Agreement a provision to recapture the value of any real property tax exemption granted to a Company.

3. If the Agency chooses to include a provision into a PILOT Agreement to recapture real property tax benefits obtained by a Project Sponsor or Applicant, the Agency's model for recapturing real property tax exemptions shall be as follows:

Years 1-5	:	100% of the tax exemptions granted shall be repaid to local taxing jurisdiction
Years 6-7	:	75% of the tax exemptions granted shall be repaid to local taxing jurisdiction
Years 8-9	:	50% of the tax exemptions granted shall be repaid to local taxing jurisdiction
Years 10	:	25% of the tax exemptions granted shall be repaid to local taxing jurisdiction
Years 11+	:	0% of the tax exemptions granted shall be repaid to local taxing jurisdiction

## **SECTION 5: SALES TAX EXEMPTION:**

### **a. General:**

1. New York State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency are exempt from sales taxes.
2. Purchases of construction materials and project related equipment during initial construction and equipping of the Project Facility shall be made as agent for the Agency and are therefore afforded full exemption from all sales taxes.
3. A Project Sponsor's failure to complete the Project or close on a bond issuance within a timeframe set forth by the Agency or as such timeframe may be extended by the approval of the Agency, may require the repayment of all sales tax previously exempted. In the event that there be such a failure, the Agency may notify the New York State Department of Taxation and Finance of sales tax due.

### **b. Tax Exemption Period:**

1. The Agency and Project Sponsor shall enter into a Sales Tax Exemption Agreement which shall include an expiration date to act as the Project Sponsor for the Agency, which shall be based upon the estimated completion date plus six (6) months to allow for possible delays and equipping.
2. Extension of the expiration date shall require formal approval of the Agency.

### **c. Percentage of Exemption:**

1. The sales tax exemption shall be equal to one hundred percent (100%) of the sales taxes that would have been levied if the Project were not exempt by reason of the Agency's involvement in the Project.

### **d. Confirmation Letter:**

1. The granting of a sales tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a Confirmation Letter by the Agency.
2. Each Confirmation Letter shall describe the scope and term of the sales tax exemption granted.

### **e. Required Filings:**

1. The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption.
2. It shall be the responsibility of the Project Sponsor to ensure that all required documentation shall be filed with each vendor to obtain any sales and use tax exemptions authorized by the Agency.

### **f. Required Reports and Records:**

1. Pursuant to Section 874(8) of the Act, the Project Sponsor shall be required to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the Applicant and/or the Project Sponsor and/or all agents, subcontractors and consultants thereof.

2. The Project Sponsor shall, concurrently upon filing said statement/report with the State, also file a copy with the Agency.
3. Pursuant to Section 874(9) of the Act, the Agency is required to file within thirty (30) days of the date that the Agency designates an Applicant to act as agent of the Agency a New York State Department of Taxation and Finance Form ST-60.

#### **SECTION 6: MORTGAGE RECORDING TAX EXEMPTION:**

1. Mortgages executed by industrial development agencies in furtherance of their lawful activities are exempt from payment of the New York State Mortgage Recording Tax pursuant to General Municipal Law Section 874.
2. The general policy of the Agency shall be to impose no mortgage recording taxes on projects involving mortgages.

#### **SECTION 7: REAL ESTATE TRANSFER TAX EXEMPTION:**

1. Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax.
2. The general policy of the Agency is to impose no tax upon any real estate transfers to or from the Agency.

#### **SECTION 8: REVIEW OF POLICY:**

1. The Agency shall on a regular and ongoing basis review this Uniform Tax Exemption Policy to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate.
2. In addition, the Executive Director shall continually review this Uniform Tax Exemption Policy and evaluate the internal control structure established to ensure compliance with the tax exemption policy. The Executive Director shall submit recommended changes to the Agency for approval.

#### **SECTION 9: FEES:**

1. All Project Sponsors and Applicants shall be responsible for paying to the Agency all fees as identified and described in the Agency's Fee Schedule, a copy of which is attached hereto and made a part of this Policy.